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Administration of justice at the United Nations

Report of the Fifth Committee

Rapporteur: Mr. Diego **Simancas** (Mexico)

I. Introduction

1. At its 2nd plenary meeting, on 13 September 2006, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its sixty-first session the item entitled "Administration of justice at the United Nations" and to allocate it to the Fifth Committee for its consideration and to the Sixth Committee for the purpose of considering the legal aspects, both institutional and procedural, of the matter.

2. The Fifth Committee considered the item at its 43rd, 44th and 45th meetings, on 22, 29 and 30 March 2007. Statements and observations made in the course of the Committee's consideration of the item are reflected in the relevant summary records (A/C.5/61/SR.43-45).

3. For its consideration of the items, the Committee had before it the following documents:

Report of the Secretary-General on the administration of justice in the Secretariat (A/59/883)

Reports of the Secretary-General concerning the administration of justice in the Secretariat: outcome of the work of the Joint Appeals Board and statistics on the disposition of cases and the work of the Panel of Counsel (A/60/72 and Corr.1 and A/61/71)

Reports of the Secretary-General concerning the practice of the Secretary-General in disciplinary matters and cases of criminal behaviour (A/60/315 and A/61/206)

Reports of the Secretary-General on the activities of the Ombudsman (A/60/376 and A/61/524)

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Report of the Secretary-General on the administration of justice in the Secretariat: implementation of resolution 59/283 (A/61/342)

Report of the Redesign Panel on the United Nations system of administration of justice (A/61/205)

Note by the Secretary-General on the report of the Redesign Panel on the United Nations system of administration of justice (A/61/758)

Report of the Advisory Committee on Administrative and Budgetary Questions on the administration of justice in the Secretariat (A/60/7/Add.1)

Report of the Advisory Committee on Administrative and Budgetary Questions on the report of the Redesign Panel on the United Nations system of administration of justice (A/61/815)

Letter dated 14 October 2005 from the President of the General Assembly to the Chairman of the Fifth Committee (A/C.5/60/10)

II. Consideration of draft resolution A/C.5/61/L.44

4. At the 45th meeting, on 30 March, the representative of Argentina, coordinator of the informal consultations on the item, introduced, on behalf of the Chairman, a draft resolution entitled "Administration of justice at the United Nations" (A/C.5/61/L.44).

5. At the same meeting, the Director of the Programme Planning and Budget Division made a statement (see A/C.5/61/SR.45).

6. Also at the same meeting, the Committee adopted draft resolution A/C.5/61/L.44 without a vote (see para. 8).

7. After the adoption of the draft resolution, statements were made by the representatives of Pakistan (on behalf of the States Members of the United Nations that are members of the Group of 77 and China), the Russian Federation, Australia (on behalf of Canada, New Zealand and Australia) and Germany (on behalf of the States Members of the United Nations that are members of the European Union) (see A/C.5/61/SR.45).

III. Recommendation of the Fifth Committee

8. The Fifth Committee recommends to the General Assembly the adoption of the following draft resolution:

Administration of justice at the United Nations

The General Assembly,

Recalling its resolutions 57/307 of 15 April 2003, 59/266 of 23 December 2004 and 59/283 of 13 April 2005,

Reiterating that a transparent, impartial, independent and effective system of administration of justice is a necessary condition for ensuring fair and just treatment of United Nations staff and is important for the success of human resources reform in the Organization,

Affirming the importance of the United Nations as an exemplary employer,

Stressing the importance of measures to eliminate any conflicts of interest in the administration of justice system,

Recognizing that the current United Nations system of administration of justice is slow, cumbersome, ineffective and lacking in professionalism, and that the current system of administrative review is flawed,

Noting with concern that an overwhelming majority of individuals serving in the system of administration of justice lack legal training or qualifications,

Noting that legal assistance to the management of the Organization is provided by a cadre of professional lawyers,

Emphasizing the importance for the United Nations to have an efficient and effective system of administration of justice so as to ensure that individuals and the Organization are held accountable for their actions in accordance with relevant resolutions and regulations,

Expressing its appreciation for the consensual outcome of the seventh special session of the Staff-Management Coordination Committee,

Having considered the report of the Secretary-General on the administration of justice in the Secretariat: implementation of resolution 59/283,[1] the report of the Redesign Panel on the United Nations system of administration of justice,[2] the note by the Secretary-General thereon[3] and the related report of the Advisory Committee on Administrative and Budgetary Questions,[4] the reports of the Secretary-General on the activities of the Ombudsman,[5] the reports of the Secretary-General concerning the administration of justice in the Secretariat: outcome of the work of the Joint Appeals Board and statistics on the disposition of cases and the work of the

[1] A/61/342.
[2] A/61/205.
[3] A/61/758.
[4] A/61/815.
[5] A/60/376 and A/61/524.

Panel of Counsel,[6] the report of the Secretary-General on the administration of justice in the Secretariat[7] and the related report of the Advisory Committee,[8] the reports of the Secretary-General concerning the practice of the Secretary-General in disciplinary matters and in cases of criminal behaviour,[9] and the letter dated 14 October 2005 from the President of the General Assembly to the Chairman of the Fifth Committee,[10]

1. *Welcomes* the report of the Redesign Panel on the United Nations system of administration of justice[2] and the note by the Secretary-General thereon;[3]

2. *Takes note* of the reports of the Secretary-General on the administration of justice in the Secretariat: implementation of resolution 59/283,[1] the activities of the Ombudsman,[5] the administration of justice in the Secretariat: outcome of the work of the Joint Appeals Board and statistics on the disposition of cases and the work of the Panel of Counsel,[6] the administration of justice in the Secretariat[7] and the practice of the Secretary-General in disciplinary matters and in cases of criminal behaviour,[9] and the reports of the Advisory Committee on Administrative and Budgetary Questions;[11]

3. *Recalls* its decision 61/511 B of 28 March 2007;

New system of administration of justice

4. *Decides* to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike;

5. *Recognizes* that the introduction of the new system of administration of justice should, inter alia, have a positive impact on staff-management relations and improve the performance of both staff and managers;

6. *Stresses* the importance of increased transparency in decision-making and increased accountability of managers for the system;

7. *Also stresses* the importance of the proper implementation of a sound performance appraisal system as a potential means of avoiding conflict and the need to provide training to improve the conflict-resolution skills of managers;

8. *Reaffirms* staff rule 112.3, which relates to the financial liability of managers;

9. *Stresses* the need for comprehensive training for all participants in the system of administration of justice as well as the dissemination of information among staff members about the system of administration of justice, the remedies available and the rights and obligations of staff members and managers;

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[6] A/60/72 and Corr.1 and A/61/71.
[7] A/59/883.
[8] A/60/7/Add.1.
[9] A/60/315 and A/61/206.
[10] A/C.5/60/10.
[11] A/60/7/Add.1 and A/61/815.

10. *Endorses* the recommendation of the Redesign Panel to abolish the Panels on Discrimination and Other Grievances, whose functions relating to the informal system will be transferred to the Office of the Ombudsman and whose other functions will be transferred to the formal system of administration of justice;

Informal system

11. *Recognizes* that the informal resolution of conflict is a crucial element of the system of administration of justice, and emphasizes that all possible use should be made of the informal system in order to avoid unnecessary litigation;

12. *Decides* to create a single integrated and decentralized Office of the Ombudsman for the United Nations Secretariat, funds and programmes;

13. *Requests* the Secretary-General to identify three posts for the Office of the Ombudsman for Geneva, Vienna and Nairobi;

14. *Emphasizes* the need for the Ombudsman to encourage staff to seek resolution through the informal system;

15. *Affirms* mediation as an important component of an effective and efficient informal system of administration of justice that should be available to any party to the conflict at any time before a matter proceeds to final judgement;

16. *Decides* to formally establish a Mediation Division located at Headquarters within the Office of the United Nations Ombudsman to provide formal mediation services for the United Nations Secretariat, funds and programmes;

17. *Stresses* that once parties have reached an agreement through mediation they are precluded from litigating claims covered by the agreement and that parties should be able to bring an action in the formal system to enforce the implementation of that agreement;

18. *Emphasizes* the role of the Ombudsman to report on broad systemic issues that it identifies, as well as those that are brought to its attention;

Formal system

19. *Agrees* that the formal system of administration of justice should comprise two tiers, consisting of a first instance, the United Nations Dispute Tribunal, and an appellate instance, the United Nations Appeals Tribunal, rendering binding decisions and ordering appropriate remedies;

20. *Decides* that a decentralized United Nations Dispute Tribunal shall replace existing advisory bodies within the current system of administration of justice, including the Joint Appeals Boards, Joint Disciplinary Committees and other bodies as appropriate;

21. *Emphasizes* the importance of efficiency in the work practices of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal;

22. *Stresses* that the effectiveness of the formal system will depend largely on the legal and judicial expertise, experience, independence and other qualifications of the judges;

23. *Agrees* that legal assistance for staff should continue to be provided, and supports the strengthening of a professional office of staff legal assistance;

24. *Reiterates* the invitation to staff representatives to further explore the possibility of establishing a staff-funded scheme in the Organization that would provide legal advice and support to the staff; staff representatives may consult with the Secretary-General as they deem appropriate;

Management evaluation

25. *Acknowledges* the need to have in place a process for management evaluation that is efficient, effective and impartial;

26. *Reaffirms* the importance of the general principle of exhausting administrative remedies before formal proceedings are instituted;

27. *Endorses* the measures to ensure managerial accountability contained in paragraph 31 of the note by the Secretary-General;[3]

Office of the Administration of Justice

28. *Agrees* to establish the Office of the Administration of Justice, headed by a senior management-level official, which will have overall responsibility for the coordination of the United Nations system of administration of justice;

Transitional measures

29. *Requests* the Secretary-General to ensure that the Joint Appeals Boards, the Joint Disciplinary Committees, the United Nations Administrative Tribunal and other bodies, as appropriate, continue to function until the new system is operational with a view to clearing all cases that are before them;

30. *Urges* the Secretary-General to continue his efforts to ensure the proper functioning of the current system of administration of justice prior to the implementation of the new system, including through the implementation of General Assembly resolution 59/283;

31. *Also urges* the Secretary-General to continue the efforts needed to comply with the time limits of the appeals process and to clear the existing backlog of cases at all stages;

Further reports

32. *Requests* the Secretary-General to report on the following issues regarding the establishment of the new system of administration of justice:

(a) An in-depth analysis regarding the scope of persons who might be covered by the new system of administration of justice;

(b) Proposals on the nomination and selection process for the Ombudsmen and judges, taking into account the recommendations of the Advisory Committee on Administrative and Budgetary Questions as set out in paragraphs 30 and 48 of its report;[4]

(c) Revised terms of reference for the Ombudsman, as appropriate, taking into account the proposed changes and suggested locations;

(d) Detailed proposals for the strengthening of an office of staff legal assistance, including information on practices in the governmental and intergovernmental sectors;

(e) Detailed and objective criteria for determining which peacekeeping operations and special political missions should have elements of the administration of justice system within their post structures;

(f) The outcome of the Staff-Management Coordination Committee working group on disciplinary proceedings, including on the recommendations of the Redesign Panel on peacekeeping operations;

(g) Arrangements for the members of the United Nations Administrative Tribunal whose terms of office are affected by the implementation of the new system;

(h) Proposals for registries for the United Nations Dispute Tribunal and its interim rules;

(i) A proposal for management evaluation, taking into account the recommendations of the Advisory Committee as set out in paragraphs 32 to 40 of its report;[4]

(j) Detailed information on the relationship and cost-sharing arrangements with the funds and programmes and underlying cost parameters, taking into consideration the comments of the Advisory Committee;

(k) A comparison of the cost of the current Joint Appeals Board/Joint Disciplinary Committee/United Nations Administrative Tribunal system and the proposed United Nations Dispute Tribunal/United Nations Appeals Tribunal system;

(l) Resource requirements for the new system of administration of justice;

33. *Also requests* the Secretary-General to consolidate the above-mentioned reports to the extent possible and to submit them to the General Assembly as a matter of priority no later than the early part of the main part of its sixty-second session;

34. *Further requests* the Secretary-General to submit to the General Assembly a report on resources required for the implementation of the present resolution as a matter of priority at the second part of its resumed sixty-first session;

Other issues

35. *Invites* the Sixth Committee to consider the legal aspects of the reports to be submitted by the Secretary-General without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibilities for administrative and budgetary matters;

36. *Decides* to continue consideration of this item during its sixty-second session as a matter of priority with the objective of implementing the new system of administration of justice no later than January 2009.